

HOUSE BILL REPORT

ESSB 5034

As Reported by House Committee On:
State Government Operations & Accountability
Appropriations

Title: An act relating to disclosure of and restrictions on campaign funding.

Brief Description: Making restrictions on campaign funding.

Sponsors: Senate Committee on Government Operations & Elections (originally sponsored by Senator Kastama; by request of Public Disclosure Commission).

Brief History:

Committee Activity:

State Government Operations & Accountability: 3/25/05, 4/1/05 [DPA];
Appropriations: 4/2/05 [DPA(SGOA)].

**Brief Summary of Engrossed Substitute Bill
(As Amended by House Committee)**

- Provides for disclosure of electioneering communications to the Public Disclosure Commission.

HOUSE COMMITTEE ON STATE GOVERNMENT OPERATIONS & ACCOUNTABILITY

Majority Report: Do pass as amended. Signed by 5 members: Representatives Haigh, Chair; Green, Vice Chair; Hunt, McDermott and Miloscia.

Minority Report: Do not pass. Signed by 4 members: Representatives Nixon, Ranking Minority Member; Clements, Assistant Ranking Minority Member; Schindler and Sump.

Staff: Marsha Reilly (786-7135).

Background:

Washington state campaign finance laws enacted in 1994 were partially invalidated by *Washington State Republican Party v. Washington State Public Disclosure Commission*. The court held that there may be no limitation on soft money and only broadcast advertisements explicitly naming the candidate or the candidate's opponent could be regulated.

Washington State Republican Party confirmed that contribution limitations and reporting requirements were constitutionally acceptable. However, limitations on contributions and

expenditures made for the purpose of issue advocacy were not acceptable. The court determined that advertisements, even those that directly reference a candidate for political office, may not be limited in any way unless those advertisements specifically instruct the voter to support or reject a candidate.

Issue advocacy does not oppose or support a candidate. It explains an issue which may be an issue in contention in a political campaign. These are not regulated or limited. However, when the issue advertisement exhorts the audience to the action of voting or not voting for a particular candidate, or attacks a candidate's character, it then becomes *express advocacy*. This causes the issue advertisement to revert to a political advertisement.

In 2003, the United States Supreme Court in *Federal Election Commission v. McConnell* upheld most of the Bipartisan Campaign Reform Act of 2002 (BCRA), commonly known as the McCain-Feingold law. Specifically, *McConnell* upheld the BCRA electioneering communication provisions. The Court held that issue advertisements broadcast during the 30-day and 60-day periods preceding federal primary and general elections are the "functional equivalent" of express advocacy.

State law requires that independent expenditures of \$1,000 or more for political advertising made within 21 days of an election must be reported to the Public Disclosure Commission (PDC) within 24 hours of or on the first working day after the date the political advertising was presented to the public. At a minimum, the report must include:

- the name and address of the person making the expenditure;
- the name and address of the person to whom the expenditure was made;
- a detailed description of the expenditure;
- the date the expenditure was made and the date the political advertising was first presented to the public;
- the amount of the expenditure; and
- the name of the candidate and office sought or the ballot proposition supported or opposed.

Summary of Amended Bill:

Electioneering communication is defined as any broadcast, cable, or satellite television or radio transmission, postal service mailing, billboard, newspaper, or periodical that clearly identifies a candidate, is made within 60 days of an election, and has a fair market value of \$5,000 or more.

Electioneering communications must be reported electronically to the PDC within 24 hours of it being made public and must include:

- the name and address of the sponsor;
- the source of funds for the communication and whether it is made with general treasury funds or through special solicitations;
- the name and address of the person to whom an electioneering communication expenditure was made;

- a detailed description of each expenditure of more than \$100;
- the date the expenditure was made and the date the communication was first broadcast;
- the amount of the expenditure;
- the name of each candidate clearly identified in the communication as well as the office being sought and the amount attributable to each candidate; and
- any other information the PDC may require or exempt by rule.

Electioneering communications made at the candidate's request are contributions and are subject to the contribution limitations. Unless exempted from contribution limits, all contributions accrue toward those limits.

Independent expenditures or electioneering communications transmitted through television or other medium utilizing a visual image or through a medium not utilizing a visual image must include a statement that is clearly spoken or appearing in clearly visible print, indicating (1) that no candidate authorized the advertisement; and (2) who paid for the advertisement. If the advertisement is paid for by a "non-individual" other than a party organization (political action committee), it must also include the names of the top five contributors who contributed more than \$700.

Only if a corporation is participating in an election campaign will its subsidiaries, branches and departments share a contribution limit. Only if a trade association, labor union, or collective bargaining association is participating in an election campaign will its local units, branches, or affiliates share one limit among themselves and that labor union. The PDC may adopt rules for this purpose that are not subject to time restrictions. A definition for "participate" is added. The effective date for sections 6 and 12 of the act is July 1, 2005. The remainder of the act takes effect January 1, 2006.

Amended Bill Compared to Engrossed Substitute Bill:

The amendment adds a provision that allows for separate contribution limits for subsidiaries, branches or departments of corporations and local units, branches or affiliates of labor organizations as long as the "parent" organization is not participating in the same campaign. The amendment restores the practice to what was adopted by rule by the PDC prior to the Supreme Court ruling in *Edelman v. State of Washington*.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date of Amended Bill: The bill takes effect on January 1, 2006.

Testimony For: This bill is similar to its companion bill that was heard earlier. The Senate added an amendment on the floor. The difference is that for broadcast advertisements on television the required information may appear in print form as long as it is visible for at least four seconds, is greater than 4 percent of the visual screen height, and is clearly visible. The

PDC has not had an opportunity to discuss the amendment, but likely would not have an objection.

Testimony Against: None.

Persons Testifying: Doug Ellis, Public Disclosure Commission.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: Do pass as amended by Committee on State Government Operations & Accountability. Signed by 17 members: Representatives Sommers, Chair; Fromhold, Vice Chair; Cody, Conway, Darneille, Dunshee, Grant, Haigh, Hunter, Kagi, Kenney, Kessler, Linville, McDermott, McIntire, Miloscia and Schual-Berke.

Minority Report: Do not pass. Signed by 11 members: Representatives Alexander, Ranking Minority Member; Anderson, Assistant Ranking Minority Member; McDonald, Assistant Ranking Minority Member; Bailey, Buri, Clements, Hinkle, Pearson, Priest, Talcott and Walsh.

Staff: Owen Rowe (786-7391).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On State Government Operations & Accountability:

No new changes were recommended.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date of Amended Bill: The bill takes effect January 1, 2006.

Testimony For: None.

Testimony Against: None.

Persons Testifying: None.

Persons Signed In To Testify But Not Testifying: None.